(5)

CT-2004

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Misc. **APPEAL No.** 964 **/2003** Division Bench

APPELLANT

M/s Shalimar Ispat Udyog
through its partner
Rajendra Daga,
34, Industrial Area,
Urkura, Raipur

VERSUS

RESPONDENTS

1. Commissioner
Central Excise and
Custom, Central Excise
Building Dhamtari Road,
Tikrapara Raipur (C.G.)

2. Customs, Excise and
Service Tax Appellate
Tribunal,
Through its Asstt.
Registrar, West Block No.2,
R.K. Puram, New Delhi.

P. R. No. 9324/03
Presented by Shri Pareej Kotecha
dated 13.10.03

APPEAL UNDER SECTION 35G OF THE CENTRAL EXCISE ACT 1944

Against the order dated 26.08.03 in Stay order no.S/278/2003 NBC/E/Stay /1051/03 NBC in A. no.E/ 1299/2003 NBCpassed by the respondent no.2.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

(29)

मामला क्रमांक MA 964 सन् 2003

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	16.10.2003: Shri Parag Kotecha learned counsel for the appellant. Shri S.K.Beriwal learned counsel for the respondents. Heard. Being aggrieved by the impugned interim stay order dated 26.8.2003 passed by Customes, Excise and Service Tax Appellate Tribunal, in Case No. E/Stay/1051/2003/NB-C in A.No. E/1299/2003-NB-C, the appellant has preferred this Misc. Appeal. By the said interim order the learned Tribunal has held that prima facie the case of the appellant is not fit for total waiver of the duty. Appellant was also directed to deposit a sum of Rs. 7 lakhs in addition to the amount already deposited within six weeks there from. Learned Tribunal further held that on deposit of the above-mentioned amount, the remaining amount of duty would be waived for hearing of the appeal. We have heard learned counsel for the parties and perused the record. Shri Parag Kotecha, learned counsel for the appellant submitted that the case of the appellant is covered by the decision of the larger	

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आदेश पत्रक

(40)

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Bench of the Tribunal and the Tribunal ought to have waived the total duty.

In paragraph No.4 of order dated 16.1.2002 the learned Tribunal held that the dispute relates to the determination of ACP of the unit of the appellant and it has been fairly conceded that this dispute deserves to be settled in accordance with the ratio of law laid down by the larger Bench of the Tribunal in the matter of Sawanmal Shibumal Steel Rolling Mills Vs. CCE, Chandigarh-I-2001 (127) ELT-46, wherein the guidelines had been laid down for the applicability of rule 5 of the Capacity Determination Rules. Learned Tribunal had also observed that the Commissioner had not taken into account this larger Bench decision while passing the order. It is also reflected in the order of the learned Tribunal that according to the appellant, there had been reduction in their ACP due to change in parameter of the mill and on that account rule 5 of the above referred capacity determination rules was not attracted. Learned Tribunal had held that the Commissioner was not required to examine this aspect of the matter in the light of the above referred decision of the larger Bench, and since it has failed to do so, the impugned order of the commissioner cannot be sustained in law. Consequently, the order of

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the commissioner was set aside and the matter was sent back to the adjudicating authority for re-determination of the ACP of the appellant in the light of the above referred larger Bench decision of the Tribunal after hearing the appellant.

The Commissioner after hearing the parties reached the conclusion that the capacity determination order and fixation of duty liability will hold good for the year 1998-99 and year 1999-2000 also. Against this order of the Commissioner, the appellant preferred an appeal before the learned CEGAT and by the impugned order the Tribunal has held that since there is no change in the parameters of the company, the decision of the larger Bench of the Tribunal is not applicable on the facts of the present case.

Having regard to the above orders of the Commissioner and CEGAT we do not find any substance in the arguments of the learned Counsel for the appellant. Learned Tribunal has already granted relaxation to the appellant and asked for deposit of only Rs. 7 lakhs in addition to the already deposited amount of Rs. 25,51,331/- and the remaining amount of duty has been waived for hearing of the appeal.

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आदेश पत्रक

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मामला क्रमांक..... सन् 200

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Learned Counsel for the appellant is not even able to make out the substantial question of law in the matter to interfere with the interim stay order passed by the learned Tribunal. Consequently, we do not find any point to interfere with the order of the learned Tribunal and therefore the appeal is liable to be dismissed. It is accordingly dismissed. Sd/- Chief Justice Sd/- L.C.BHADOO Judge	